## REMARKS

Reconsideration is requested.

The Examiner's comment regarding previous requests for a corrected Filing

Receipt on page 2 of the Office Action dated June 23, 2010 is noted.

A Corrected Filing Receipt is requested which accurately reflects the status of the parent application no. 07/920,266 as a 371 U.S. National Phase of International Application No. PCT/EP91/024089 filed December 13, 1991.

The applicants have filed similar requests on July 2, 2004, April 27, 2005, May 9, 2005, February 20, 2007, May 27, 2009<sup>1</sup>. The undersigned has received from the Patent Office a Notice Regarding Benefit/Priority Claim(s) dated September 27, 2004 and a Response to Request for Corrected Filing Receipt dated June 3, 2009 indicating that the prior filed Non-provisional application no. 07/920,266 "has been improperly indicated as a National Stage (35 U.S.C. 371) Application". The latest "Response" states the following:

"The Office's records show that the prior-filed application is an application filed under 35 U.S.C. 111(a). The Office has entered the benefit claim to the prior-filed application as a benefit claim to an application filed under 35 U.S.C. 111(a). Any request for a corrected filing receipt to include the indication that the prior-filed application is a national stage

has been added.

<sup>&</sup>lt;sup>1</sup> The Requests filed July 2, 2004, April 27, 2005 and May 9, 2005 identified international application no. PCT/EP91/024089 as having been filed December 31, 1991, as identified in the original Patent Office Filing Receipt.

International Application no. PCTEP91/024088 was filed December 13, 1991, as noted in the applicants Preliminary Amendment filed April 13, 2004, the applicants Declaration filed August 18, 2004, the applicants Renewed Request filed February 20, 2007, the applicants Request for Correction of Corrected Filing Receipt filed May 27, 2009, the Supplemental Application Data Sheet filled May 27, 2009, the Notification of Acceptance mailed in application no. 07/920,266 reproduced below, and the attached Missing Requirements Under 35 U.S.C. 371 dated August 28, 1992 mailed in application no. 07/920,266. The first paragraph of the specification has been corrected above in this regard. No new matter

application will not be granted unless the applicant supplies evidence that the prior application was in fact a national stage application. Accordingly, applicant should not submit such request without such evidence. Applicant should submit an amendment (or an applicants data sheet (ADS) if the benefit claim was submitted in an ADS) to delete the indication that the prior-filed application is a national stage application."

The "evidence" described in the "Response" dated June 3, 2009 and quoted above was supplied however in at least the applicants Request of February 20, 2007 and Response of April 27, 2005. Specifically, the applicants previously supplied a copy of the Notice of Acceptance dated January 6, 1993 from Application No. 07/920,286 confirming that the application no. 07/920,286 is a U.S. national phase of PCT/EP91/02409. See page 5 of the Renewed Request filed February 20, 2007 and page 5 of the applicants Request for Correction of Filing Receipt filed by facsimile on April 27, 2005. The following is a further reproduction of the Notification of Acceptance confirming the Patent Office treatment of application no. 07/920,286 as a U.S. national phase of PCT/EP91/02409:

> NIXON & VANDERHYE PC3 Fax: 783-816-4188 Apr 27 2885 14:83 P. 05 UNITED STATES DESIGNATED ELECTED WILLIAM W. BECKETT OFFICE (DO/EQ/US) WHELDER BECKETT
> BANNER, BIRCH, MC KIE & BECKETT
> 1001 G STREET, M.M.; ELEVERTH PLOOR
> WASHINGTON, B.C. 20001-4597 NOTIFICATION OF ACCEPTANCE OF APPLICATION UNDER 35 U.S.C. 371 AND 37 CFR 1.494 OR 1.495 Date of Mading JAN 0 8 1993 6 JAN 1993 lie Reference 137,040502 IDENTIFICATION OF THE INTERNATIONAL APPLICATION International application Number International filing date fiority date claimed PCT/EP91/02409 14 DEC 1990 13 ppr 1001 Applicant for DO/EC/US DELEYS. ROBERT J. POLLET, DIRK MAERTENS. GFFRT AND VAN HEINERSLID NOTIFICATION The applicant is hergby advised that the Unites States Patent and Trademark Office in its capacity as a Designated Office, Elected Office, has determined that the above identified international application has met the requirements of 35 U.S.C. 371 and 37 CFR 1.494. 1.495 and is ACCEPTED for national patentability examination in the United States Patent and Trademark Office The United States Serial Number assigned to the application and the relevant dates are: N/920286 14 OCT 1992 14 OCT 1992 U.S.NATIONAL SERIAL NO. 35 U.S.C. 102(e) DATE DATE OF RECEIPT 35 U.S.C. 371 REQUIREMENTS A request for immediate examination under 35 U.S.C. 371 (f) was received on 4 OCT 1992 \_ and the application will be examined in turn. No request for immediate examination under 35 U.S.C. 371(f) was received. The application will not be processed or examined before the time limit set forth in either PCT Article 23 (Chapter I of the PCT), or PCT Article 40 (Chapter II of the PCT) whichever is applicable. UNITED STATES DESIGNATED/BLECTED OFFICE ADDRESS ONLY: COMMISSIONER OF PATENTS AND TRADEMARKS AUTHORIZED OFFICER Box PCT, Aun. DO/EO/US Washington, D.C. 20231 Monuma Form PCT/DO/EO/903 (U.S. Version) (April 1987)

The applicants Preliminary Amendment of April 13, 2004 identified application no. 07/920,286 as a U.S. national phase of PCT/EP91/02409.

The applicants note that a BIB DATA SHEET contained in the PTO IFW indexed at May 2, 2007 describes application no. 07/920,286 as a 371 U.S. national phase of PCT/EP91/02409, and does not list application no. PCT/EP91/02409 as a "Foreign Applications". A subsequent BIB DATA SHEET indexed on October 6, 2008 in the PTO IFW fails to make any reference to the patent International Application. A BIB DATA SHEET indexed on May 21, 2009 in the PTO IFW again refers to the parent PCT application as a "FOREIGN APPLICATIONS".

The present application is based on and claims benefit of U.S. Patent No. 6,872,520. As shown below, the first page of U.S. Patent No. 6,872,520 identifies U.S. application no. 07/920,286 as being filed "as application No. PCT/EP91/02409".

ON United States Patent US 6,872,520 B2 (im Patent No.: Mar. 29, 2005 DeLevs et al. (48) Date of Patent: (54) SYNTHETIC ANTIGENS FOR THE DETECTION OF ANTIBODIES TO FOREIGN PATENT DOCUMENTS 0.318.216 5:1989 HEPATITIS C VIRUS EP 388232 0 442 394 0 445 423 8:(99) (75) Investors: Robert J. DeLeys, Timer Bridges, NJ FP 0/1901 (US); Dirk Pollet, Schilde (BE); Geert 0 445 891 0:1901 Macriens, Brigge (BE): Hugo Van Heuverswijn, Laarne (BE) EP 0.450 931 10/1991 FP 0.451 841 \$69/\$98x1 EP 0 468 527 1/3992 (73) Assignce: Innogenetics N.V., Gheur (BE) 0 484 787 2/1992 EP 5/1992 wo WO 89/04669 6/1989 (\*) Notice: Subject to any disclaimer, the term of this WO 92/01714 2/3992 atent is extended or adjusted under 35 U.S.C. 154(b) by 158 days. OTHER PUBLICATIONS Choo, Q.L., et al, Science 244: 359-362 (1989) "Isolation (21) Appl. No.: 10/044,995 of a cONA Close Derived from a Blood-Borne Non-A. Non-B Viral Hepatits Genome (22) Filed: Jan. 15, 2002 Kuo, G., et al, Science, 244. 302-364 (1989) "An Assay for Prior Publication Data Circulating Antivodies to a Major Etiologic Virus of Human Non-A. Non-B Hepetitis" US NORMARKS AT May 13 2003 Okamoto, H., et al, Japan J. Esp. Med., 60:3 167-177 (1990) "The 5-Terminal Sequence of the Hepatitis C Virus Related U.S. Application Data Okamoto, H., et al, Japan J. Exp. Med., 60:4 223-233 (62) Division of application No. 09/941,611, filed on Aug. 30. Division of application No. 06/94,1611, Eded on Aug. 30, 200, now Far. No. 6,257-617, Which is a division of application No. (6/275,265, Eded on Mar. 22, 1999), now Pat. No. 6,257-704, which is a configuration No. 16/275,265, Eded on Mar. 22, 1999, now Pat. No. 5,37-704, which is a configuration No. 16/270,2705, Order on Pat. 21, 1997, over Pat. No. 5,922,532, which is a configuration No. 16/270,2250, Eded as reprinciple on No. 16/270,2250, Eded as reprinciple No. 16/270,2250, Eded as reprinciple No. 16/270,2250, Eded Aug. 21, 1991, now standards. (1990) "Enzyme-Linked Immunosorbent Assay for Antibodies against the Capsid Protein of Hepatitis C Virus with a Synthetic Oligopoptide' Viancks, R., Eur. J. Clin Microbiot Infoc. Dis., 9(9), "Evaluation of a line immunoassay ... ", 674-676. Shimonishi X., Ed. Peptide Chemistry, 1990 "Proceedings of the 26th Symposium on Peptide Chemistry", Osaks, Oct Foreign Application Priority Data 25-27, 1990. Munckata et al, "Epitope-Mapping of Hepathis C

The present application is based on and claims benefit of U.S. Patent No.

6,576,417 . As shown below, the first page of U.S. Patent No. 6,576,417 identifies U.S. application no. 07/920,286 as being filed "as application No. PCT/EP91/02409".

(12) United States Patent US 6.576.417 B2 (10) Patent No.: Deleys et al. (45) Date of Patent: Jun. 10, 2003 (54) SYNTHETIC ANTIGENS FOR THE FOREIGN PATENT DOCUMENTS DETECTION OF ANTIBODIES TO 170 0.318.216 \$11090 HEPATITIS C VIRUS EP 388232 9/1990 0 442 394 8/1991 (75) Inventors: Robert J. Delevs, Three Bridges, NJ 0 445 423 FP 9/1991 (US); Dirk Pollet, Schilde (BE); Geert EP 0 445 801 9/1991 Maertens, Brugge (BE); Hugo Van EP 0.450.931 10:1991 Heuverswijn, Lasenc (BE) 0 451 891 10:1991 0 468 527 1/1992 (73) Assignce: Innogenetics, N.V., Ghent (BE) 0 471 356 2/1902 0 484 787 5/1992 wo WO 89/04069 6/1989 (\*) Notice: Subject to any disclaimer, the term of this wo WO 92/01714 2:1992 patent is extended or adjusted under 35 U.S.C. 154(b) by 0 days. OTHER PUBLICATIONS Choo, U.L., et al, Science 244: 359-362 (1989) "Isolation (21) Appl. No.: 89/941,611 of a cDNA Clone Derived from a Blood-Borne Non-A, Non-B Viral Henstitis Genome' (22) Filed: Aug. 30, 2001 Kuo, G., et al, Science, 244 · 362-364 (1989) "An Assay for (65) Prior Publication Data Circulating Antibodics to a Major Etiologic Virus of Human Non-A, Nou-B Hepatitis' US 2002/0106640 A1 Aug. 8, 2002 Okamoto, H., et al, Japan J. Exp. Med., 60:3 167-177 (1990) "The 5"-Terminal Sequence of the Reputitis C Virus Related U.S. Application Data Okamoto, H., et al, Japan J. Exp. Med., 60:4 223-233 (62) Division of application No. 09/275,265, filed on Mar. 23, Division of appreciation No. 1927—265, filter on Mat. 23, 1999, now Pal. No. 6, 237, 761, which is a continuation of application No. 659, 1659, filter on Pal. 21, 1995, now Pal. No. 5, 222, 532, which is a constituation of application No. 07, 920, 286, filted as application No. PCI/El91.02609 on Dec. 31, 2301, now shruidoned. (1990) "Enzyme-Linked Immunosorbent Assay for Antibodies against the Capsid Protein of Hepatitis C Virus with a Synthetic Oligopeptide" Viancks, R., Eur. J. Clin. Microbiol. Infec. Dis., 9(9), 1990, "Evaluation of a line immunoussay ... ", 674-676. Foreign Application Priority Data Shimonishi Y., Ed. Poptide Chemistry, 1990 "Proceedings of the 26th Symposium on Peptide Chemistry", Osaka, Oct. 

The present application is based on and claims benefit of U.S. Patent No. 6,287,761. As shown below, the first page of U.S. Patent No. 6,287,761 identifies U.S. application no. 07/920,286 as being filed "as application No. PCT/EP91/02409".

> (2) United States Patent (10) Patent No.: US 6,287,761 B1 Delevs et al. (45) Date of Patent: \*Sep. 11, 2001 8 445 801 (54) SYNTHETIC ANTIGENS FOR THE 9/1991 (I-P) DETECTION OF ANTIBODIES TO 0.450.021 10/1991 (EP) 0.451.801 HEPATITIS C VIRUS 10/1991 (199) 0.468 527 1/1992 (EP) 2/1992 (EP) 0 471 356 (75) Inventors: Robert J. Deleys, Three Bridges, NJ 0 484 787 5/1992 (EP) (US): Dirk Pollet, Schilde (BE); Geert WO 80:04669 6/1989 (WO). Macriens, Brages (BE); Hugo Van WO 92/01714 2/1992 (WO) Houverswiin, Laarne (BE) OTHER PUBLICATIONS (73) Assignee: Innogenetics N.V., Ghem (BE) Viancks, R., Eur J Clin. Microbiol, Infec. Dis., 9(9), 1990 "Evaluation of a line immunoussay for the differential ( ° ) Notice: Subject to any disclaimer, the term of this detection of antibodies of human immunodeficiency virus". patent is extended or adjusted under 35 U.S.C. 154(b) by 0 days. 674-676. Shimonishi Y., Ed. Peptide Chemistry, 1990 "Proceedings of This patent is subject to a terminal disthe 26th Symposium on Peptide Chemistry", Osaka, Oct. 25-27, 1990. claimer Munckata et al., "Eptitope-Mapping of Hepatitis C Virus Constituting Protein" pp. 211-214, Protein Research Form-(21) Appl. No.: 69/275,265 dation, Osaka, 1991. (22) Filed: Mar. 23, 1999 Choo, Q.L., et al, Science 244: 359-362 (1989) "Isolation of a cDNA Clone Derived from a Blood-Borne Non-A. Related U.S. Application Data Non-B Viral Hepatitis Genome Kno, G., et al. Science, 244 ; 362-364 (1989) "An Assay for (62) Continuation of application No. 08/391.671, filed on Feb. 21, 1985, now Pat. No. 5,922,352, which is a continuation of application No. 079/20,286, filed as application No. PCT/RP91/02/09 on Dec. 31, 1991, now abandoned. Circulating Antibodies to a Major Etiologic Virus of Human Non-A, Non-B Repatitis" Okamoto, H., et al, Japan J. Exp. Med., 60:3 167-177 (1990) "The 5-Terminal Sequence of the Hepstitis C Virus Foreign Application Priority Data Genome". Dec. 14, 1990 (EP) .... ... 90124241 Okamoto, H., et al, Japan J. Exp. Med., 60:4 223-233 (1990) "Enzyme-Linked immunosorbent Assay for Anti-(51) Int. CL2 COIN 33/576 bodies against the Cansid Protein of Hepatitis C Virus with (52) U.S. CL 435/5: 436/518: 436/820;

The present application is based on and claims benefit of U.S. Patent No.

5,922,532. As shown below, the first page of U.S. Patent No. 5,922,532 identifies U.S. application no. 07/920,286 as being filed "as application No. PCT/EP91/02409".

September 23, 2010

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[63] Continuation of application No. 07/920,286, filed as appli- cation No. PCL/CP914(2418, Dec. 13, 1991, abandoned.			Nen-B Viz	al Hepatitis G	inome".	od-Berse Noo-A,
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A copy of the history of application no. 07/920,286 obtained from the Patent Office is attached as an "NPL" document. The following evidence that application no. 07/920,286 is a 371 U.S. National Phase of PCT/EP91/02489 is contained in the attached file history and reproduced below:

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The Notice of Missing Requirements dated August 28, 1992 which set a due date for filling the inventors' Declaration by October 14, 1992 (i.e., 22 months from the earliest claimed priority date):

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The applicants Transmittal Letter submitting the Declaration on October 14,

1992, as acknowledged by the PCT/PTO date stamp:

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The Notification of Acceptance of Application Under 35 U.S.C. 371 and 37 CFR

1.494 or 1.495 mailed January 6, 1993:

WILLIAM W. BECKETT BARRER, DIRCH, MC KIE 1001 G SIRKET, N.W., 1 WASHINGTON, D.C. 2000	SOOT HUXBARY	NOTIFIC APPLICA	CATES DESIGNATED/ELECTED OFFICE (DO/EO/US) ATION OF ACCEPTANCE OF ITION UNDER 35 U.S.C. 371 17 CFR 1,494 OR 1,495
		Date of Mails	<sup>ng</sup> 6 JAN 1993
		File Reference	
		137,04050	
IDENTIFICATE	ON OF THE INTER		Priority date clasmed
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PCT/EP91/02409	13 582 1001		
Applicant for DO/EO/US			
DELEYS, BOBERT J. PGLI			AND VAM HEINERSMEAN
	NOTIFICA		
The applicant is hereby advised	that the Unites S	tates Patent t	end Trademark Office in its
canacing as a Thesignated Of	ffice   Flected	Office, has de	termined that the above identific
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The Patent Office "DO/US Worksheet" acknowledging that that applicants have met the requirements of 35 U.S.C. 371 as of October 14, 1992:

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Page 2 of the Office Action dated February 3, 1994 from the Examiner acknowledging that the application was :filed according to 35 U.S.C. § 371":

Serial No. 920206 -2- art Unit 1802
It is noted that this case has been filled according to 35 U.S.C. § 371.
Restriction to one of the following inventions is required
<ol> <li>Claims 1-7 and 20-25, drawn to first NCV entigen and method of use, classified in Class 530, subclass 524- and Class 435, subclass 5.</li> </ol>
<ol> <li>Claims 8-14 and 20-25, drawn to record BCV actigen an method of use, classified in Class 590, subclass 324* and Class 425, subclass 5.</li> </ol>
III. Claime 15-19, and 29-25, drawn to third NCV antigen a method of use, classified in Class 539, subclass 524- and Class 435, subclass 5.
The inventions are distinct, each from the other because $\boldsymbol{\alpha}$ the following reasons:
The inventions of Group I, II, and III are distinct because the antigens do not share a common technical feature in that eals encoded by a different region of the MCV genera and the antigens do not where any amino acid sequences nor any epitopes.
Because these inventions are distinct for the reasons give above and because an undue burden would result if two or more o the groups were to be examined together, restriction for examination purposes as indicated is groper.
Applicant is advised that the response to this requirement to be complete must include an election of the invention to be examined even though the requirement be trueszeed.
A tolephone call was made to Cynthia Poulke on January 4, 1894, to request an oral election to the above restriction requirement, but did not result in an election being made.
Applicant is rewinded that upon the cancellation of claims to a non-elected invention, the inventorship must be smended in compliance with 37 C.F.R. B. 1.44815 if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any members of
inventorship sust be accompanied by a diligently-filed petition under 37 C.F.R. 5 1.48(t) and by the fee required under 37 C.F. 5 1.17(b).
Papers related to this application way he submitted to Gron 188 by Jaccissize transmission. Papers should be faxed to Group 188 via the PTO Fax Center located in Crystal Hall 1. The festi

Page 2 of the Office Action dated August 16, 1994 from the Examiner again acknowledging that the application was being treated as having been filed under 35 U.S.C. § 371:

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Roris! Number: 07/020288
                                                                           . 2
Art Unit: 1802
       Applicant's election with traverse of Group III. Claims 15-
19 and 20-25. In Paper No 13 is acknowledged
                                                         The traversal is
on the ground(s) that under 75 U.S.C. $ 371, lack of unity
 requires that groups of claims must be identified which have no
 general inventive concept linking the claims of the groups with
 each other and that the originally filed claims all related to
 peptide sequences which are capable of mimicking proteins encoded
 by HCV and all can be used as respents for screening blood for
 antibodies to HCV. This is not found persussive because 35
U.S.C. § 371 provides for one product and one method of use;
ciaims drawn to different peptides with different sensences and
antigenic characteristic, originating from different viral
domains and from different vival proteins, represent distinct
products which have no common technical feature.
      The requirement is still deemed proper and is therefore made
FEMAL.
       Claims 26-92 are pending, original claims 1-23 having been
cancelled in Paper No. 14
      The following is a quotation of the first paragraph of 35
U.S.C. 9 112:
      The specification shall contein a written description of the
      The specification shall contain a written description or the
invention, and of the mainer and process of making sid selmy
enable any person skilled in the art to which it pertains
or with which it is ment hearly cornected to make and use
the same and shall set forth the best mode contamplated by
the inventor of carrying out his invention.
      The specification is objected to under 35 U.S.C & 112.
first paragraph, as failing to provide an adequate written
description of the invention and failing to teach how to make
and/or use the invention.
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DeLeys et al

Appl. No. 10/822,871 Attnv. Ref.: 2551-141

Amendment

September 23, 2010

The Patent Office is requested to correct their records consistent with the file

history of application no. 07/920,286. A Corrected Filing Receipt is requested.

The undersigned is filing concurrently, a Rule 181 Petition directed to the Office

of PCT Legal Administration, as suggested by Ms Tamara Graysay during a

teleconference with the undersigned on September 23, 2010. Grant of the Petition is

requested.

The specification has been revised in the first paragraph. No new matter has

been added.

Claims 55, 59, 60, 62, 68-76 and 81-93 are pending. Claims 74-76 have been

withdrawn from consideration. Claims 90-93 are not indicated as being withdrawn on

pages 1 or 2 of the Office Action dated June 23, 2010. Page 1 of the Office Action

states that claims 90-93 are rejected and page 3 of the Office Action states that claims

90-93 are rejected under Section 112, second paragraph. Rejoinder of the withdrawn

claims and allowance of all of the claims are requested.

The claims have been amended, without prejudice.

Claim 71 has been amended to obviate the objection to same. Withdrawal of the

objection is requested.

The Section 112, second paragraph, rejection of claims 55, 59, 60, 62, 68-76 and

81-93 is obviated by the above amendments. Withdrawal of the rejection is requested.

The claims are submitted to be in condition for allowance and a Notice to that

effect is requested. The Examiner is requested to contact the undersigned, preferably

by telephone, in the event anything further is required.

- 37 -

1692552

Respectfully submitted,

## NIXON & VANDERHYE P.C.

By: /B, J, Sadoff/
B, J, Sadoff
Reg, No. 36,663

B.IS:

901 North Glebe Road, 11th Floor Arlington, VA 22203-1808

Telephone: (703) 816-4000 Facsimile: (703) 816-4100